



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 171

[EPA-HQ-OPP-2021-0831; FRL-9134.1-01-OCSPP]

RIN 2070-AL01

### **Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to extend the deadline by which Federal, State, territory, and tribal certifying authorities with existing certification plans are required to revise their existing certification plans to conform with the updated Federal standards for the certification of applicators of restricted use pesticides (RUPs) up to but not longer than November 4, 2024. Federal, State, territory, and tribal certifying authorities with existing certification plans are required to revise their existing certification plans to conform with the updated Federal standards for the certification of applicators of RUPs and the regulations established the deadline by which the existing plans are set to expire unless the revised plans are approved by the Agency. EPA is proposing this extension to allow additional time for proposed certification plan modifications to continue being reviewed and approved by EPA without interruption to Federal, State, territory, and tribal certification programs or to those who are certified to use RUPs under those programs.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *Federal Register*].

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2021-0831, using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any

information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Schroeder, Pesticide Re-Evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-2376; email address: [schroeder.carolyn@epa.gov](mailto:schroeder.carolyn@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Executive Summary**

#### *A. Does this action apply to me?*

You may be potentially affected by this action if you are a Federal, State, territory, or tribal agency who administers a certification program for pesticides applicators. You may also be potentially affected by this action if you are: A registrant of RUP products; a person who applies RUPs, including those under the direct supervision of a certified applicator; a person who relies upon the availability of RUPs; someone who hires a certified applicator to apply an RUP; a pesticide safety educator; or other person who provides pesticide safety training for pesticide applicator certification or recertification. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agricultural Establishments (Crop Production) (NAICS code 111);

- Nursery and Tree Production (NAICS code 111421);
- Agricultural Pest Control and Pesticide Handling on Farms (NAICS code 115112);
- Crop Advisors (NAICS codes 115112, 541690, 541712);
- Agricultural (Animal) Pest Control (Livestock Spraying) (NAICS code 115210);
- Forestry Pest Control (NAICS code 115310);
- Wood Preservation Pest Control (NAICS code 321114);
- Pesticide Registrants (NAICS code 325320);
- Pesticide Dealers (NAICS codes 424690, 424910, 444220);
- Industrial, Institutional, Structural & Health Related Pest Control (NAICS code 561710);
- Ornamental & Turf, Rights-of-Way Pest Control (NAICS code 561730);
- Environmental Protection Program Administrators (NAICS code 924110); and
- Governmental Pest Control Programs (NAICS code 926140).

*B. What is the Agency's authority for taking this action?*

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136-136y, particularly sections 136a(d), 136i, and 136w.

*C. What action is the Agency taking?*

This action proposes to extend the expiration date for existing certification plans at 40 CFR 171.5(c) for up to but not longer than 2-years. No other changes to the certification standards and requirements specified in 40 CFR part 171 are being proposed in this rulemaking.

*D. Why is the Agency taking this action?*

Without the proposed deadline extension, Federal, State, territory, and tribal certification programs will expire if their revised certification plans are not approved by the recently modified regulatory deadline of November 4, 2022 (Ref. 1). Applicators formerly certified under such plans will no longer be allowed to use RUPs. While EPA anticipates that all plans will have been reviewed and returned to the certifying authorities for further revision by February 2022, the

recent extension of eight months (which extended the original deadline of March 4, 2022 to November 4, 2022) may not be sufficient time for all certifying authorities to respond to EPA comments and complete approvable certification plans, or for EPA to work closely with the certifying authorities to assure that their proposed certification plan modifications meet current Federal standards.

EPA expects that some plans will be approved in early 2022, with more to follow by November 2022. Although significant progress has been made in the development of revised plans and EPA's subsequent reviews, COVID-19 resource constraints have impacted the time certifying authorities have had to respond to EPA's comments and the Agency's ability to work with certifying authorities to assure that their plans are approvable by the regulatory deadline. Further collaboration may still be needed between EPA and the certifying authorities to finalize and approve all plans. EPA intends to work expeditiously toward approving and supporting the implementation of plans that meet the current Federal standards during the extension and intends to provide periodic notifications to the public when those approvals have occurred. No other changes to the certification standards and requirements specified in 40 CFR part 171 are being made in this rulemaking.

EPA finds that an additional extension of the deadline will likely be needed to assure that certified applicators in some parts of the country will continue to be authorized to use RUPs without interruption and to provide certifying authorities with adequate time to review and respond to EPA comments on their plans. The proposed extension will also provide additional time that was initially lost due to COVID-19 for EPA to work more closely with the certifying authorities to address any remaining feedback and work toward approving their certification plans.

*E. What are the incremental impacts of this action?*

Incremental impacts of the proposed extension of the regulatory deadline are generally positive because the extension provides certifying entities and EPA with more time to ensure that

modified plans meeting the minimum Federal requirements are in place, while failure to extend the regulatory deadline would likely have significant adverse impacts on the certifying authorities, the economy, public health, and the environment (see discussion in Unit III.B.).

EPA uses information from the 2017 certification rule (Ref. 2), which mandates the expiration of existing certification plans unless EPA approves revised certification plans, to assess the incremental economic impacts of this proposed rule to extend the recently modified deadline of November 4, 2022 (Ref. 1), up to November 4, 2024. The impacts of the proposed extension are that the implementation costs borne by the certifying authorities will be expended over an additional period of time and some of the costs to commercial and private applicators may be delayed. Some of the benefits of the rule (e.g., reduction in acute illnesses from pesticide poisoning) are foregone as the implementation of some plans may be delayed while EPA works with the certifying authorities toward approval of their revised certification plans.

1. *Cost to certifying authorities.* The 2017 rule provided a compliance period for certifying authorities to develop, obtain approval, and implement any new procedures, regulations, or statutes to meet the new Federal standards. The 2017 rule further provided that existing plans could remain in effect after March 4, 2022, which was recently extended to November 4, 2022 (Ref. 1), only to the extent specified in EPA's approval of a modified certification plan; EPA did not explicitly set a date for full implementation of the new programs. Certifying authorities can begin implementing their revisions to their programs when they are approved by EPA; portions of revised certification programs may be implemented in advance of plan approvals when in compliance with the 2017 rule requirements. All certifying authorities submitted their draft revised certification plans to EPA by the March 2020 deadline and the draft plans are undergoing review at EPA. Shortly after the March 2020 deadline, the COVID-19 public health emergency disrupted the expected schedule of the EPA's review and approval of the draft plans. EPA and certifying authorities could not put the amount of effort into this part of the rule implementation that was originally anticipated, as they had to divert their resources to

address pandemic-related issues. Thus, only part of the cost to certifying authorities estimated in the 2017 rule has presently been incurred and some of the cost will be expended during the additional extension period. Therefore, this proposed rule is not expected to significantly change the costs to certifying authorities estimated in the 2017 Economic Analysis (EA) (Ref. 3).

2. *Cost to certified applicators.* The other sectors affected by the 2017 rule (e.g., commercial and private applicators) do not incur any costs until revised certification plans take effect. Once the revised plans take effect, the 2017 EA estimated that commercial applicators and private applicators would incur annualized costs of \$16.2 million and \$8.6 million, respectively, to meet the new certification standards. Some of these costs could be delayed as some of the revised plans are approved and implemented over a longer period of time. Not all costs to certified applicators will be delayed, as EPA expects that some plans will be approved in early 2022, with more to follow by November 2022. Moreover, some certifying authorities have or will be able to start implementing changes conforming to the 2017 rule before their plan's approval.

3. *Potentially delayed benefits of the 2017 rule.* The delay in the approval of revised certification plans may also delay some benefits that would have otherwise accrued if certification plans were approved and implemented by the deadline established in the 2017 rule, as assessed in the 2017 EA. In 2017, EPA estimated that implementing the new Federal certification requirements would reduce acute illness caused by exposure to RUPs, based on an analysis of pesticide incidents assuming that about 20% of poisonings are reported (a plausible estimate based on the available literature regarding occupational injuries or chemical poisoning incidents). Incidents may result in harms to applicators, persons in the vicinity, and the environment. Reported incidents most commonly cite exposure to the applicator or farmworkers in adjacent areas. Based on avoided medical costs and lost wages, the annualized benefits of the rule were estimated to be between \$51.1 and \$94.4 million. In addition, EPA expected that improved training would also reduce chronic illness among applicators from repeated RUP

exposure and would benefit the public from better protections from RUP exposure when occupying treated buildings or outdoor spaces, consuming treated food products, and reducing the impact on non-target plants and animals. To the extent that this rule delays implementation of the 2017 rule, it will delay accrual of some of those benefits.

Not all the benefits of certification plan revisions will be delayed for a period of time up to November 4, 2024, however, since some programs have been or will be able to start implementing changes sooner. Certifying authorities can begin implementing their revisions to their programs as soon as they are approved by EPA. Plan approvals are anticipated to begin in early 2022 and will continue on a rolling basis through the recently extended November 2022 date while this action goes through standard rulemaking procedures. In some jurisdictions, portions of revised certification programs are presently being implemented and in compliance with or exceeding the 2017 rule requirements, such as imposing minimum age requirements and updating manuals and exam administration procedures, so some benefits are already being realized in advance of full plan approvals. Additionally, some certifying authorities were forced to make changes to their existing certification programs to accommodate COVID-19 protocols, all of which were required to meet or exceed the new requirements and standards established in the 2017 rule.

Without the extension, however, benefits of the 2017 rule would not be fully realized. The impact of plans expiring absent EPA's approval of modified plans has far-reaching implications across many business sectors, including but not limited to the agricultural sector, importation and exportation business, and structural pest control (e.g., termite control), and could potentially impact all communities and populations throughout the U.S. in various ways as discussed in Unit I.E.4. In addition to the potential delay of benefits that would result from this extension, EPA and certifying authorities have already invested significant resources in the preparation and review of plan modification that would fully implement the 2017 rule. It is EPA's considered judgement that the sunk cost of these investments, taken together with the

significant costs of not extending the deadline as discussed in Unit I.E.4., outweigh the delayed benefits. EPA will continue to work expeditiously with certifying authorities to review and approve plans on a rolling basis. EPA's ongoing collaboration with the certifying authorities, which was significantly impacted by the COVID-19 pandemic, will result in modified plans that are protective of the environment and human health, including the health of certified pesticide applicators and those under their direct supervision, and will ensure that certified applicators are trained to prevent bystander and worker exposures as contemplated in the 2017 rule.

4. *Costs of not extending the deadline.* If the existing regulatory deadline is not extended further, it is likely that EPA will be unable to approve some of the State, territory, tribal, and other Federal agency certification plans that may still need additional work and/or coordination beyond the recently revised November 4, 2022 deadline, resulting in termination of these plans. EPA would have to take responsibility for administering certification programs for a portion of the country. A gap in coverage will likely exist between when certification plans expire and when EPA can fully implement EPA-administered certification programs, resulting in RUPs being unavailable for use in many places during the 2023 growing season and potentially through the end of 2023 or longer. It is also unlikely that EPA's certification programs would offer the same availability and convenience as those offered by State, territorial, and tribal certifying authorities, so some applicators could face higher costs or be unable to obtain certification to apply RUPs. Once the EPA-administered certification plans are in place, they may in some cases be less protective than State plans would be, as many State plans include requirements that are more protective than the EPA minimum requirements and these benefits will be lost if the deadline is not extended, and EPA takes over parts of the country's certification programs.

Furthermore, the expiration of certification plans could lead to confusion and potential enforcement issues when certifications that were formerly valid suddenly expire. It is also unlikely that EPA's certification programs could offer the depth of specialization found in many State, territorial and tribal certifying programs, which may be tailored to the particular pest



control and human health needs commonly found in these localities. Thus, applicators certified under EPA programs would only be assessed for competency at the minimum Federal standards and may not receive the specialized training that State, territorial, and tribal certifying authorities often provide. In addition, many States require professional applicators to be trained and licensed to apply general use pesticides and it is unclear to what extent States would be able to support those programs if they were to lose authority to certify RUP applicators.

Additionally, EPA would be compelled to expend time and resources in establishing the infrastructure to administer these certification programs, which would further delay coordination with certifying authorities whose plans were either approved and would be in the process of being implemented or are awaiting approval. This is likely to cause significant disruption for agricultural, commercial, and governmental users of RUPs, and could have consequences for pest control in a broad variety of areas, including but not limited to the control of public health pests (e.g., mosquito control programs), pests that impact agriculture and livestock operations, structural pests (e.g., termite control), pests that threaten State and national forests, and pests in containerized cargo. Applicators who use RUPs could lose work and income as a result.

#### *F. Request for Comments*

While EPA expects a significant amount of progress to be made leading up to the recently revised expiration date of November 4, 2022, EPA anticipates that additional time may be needed for some certifying authorities to revise their plans based on EPA's feedback and for EPA to approve those plans. This proposed rule provides an opportunity for stakeholders to submit comments on an additional extension to the expiration date for existing plans, and to include in their comments specific information detailing the necessity for or concerns over such an extension. EPA is proposing an extension up to but not longer than November 4, 2024, but the Agency is interested in receiving information on the appropriate length of time to approve revised certification plans. During this comment period, EPA expects that certifying authorities and other interested stakeholders will be able to provide more information on the efforts, issues,

and concerns within each certifying authority's jurisdiction, the potential impacts of delayed certification plans, and the consequences of existing plans expiring without a new certification plan in effect. Any comments submitted in response to the interim final rule that previously extended the deadline (Ref. 1) will also be considered in the development of this rulemaking.

*G. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through <https://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

## **II. Background**

On December 20, 2021, EPA issued an interim final rule that extended the original expiration date from March 4, 2022 to November 4, 2022 (Ref. 1). Unit II. of the interim final rule's preamble provides a summary of the 2017 Certification of Pesticide Applicators final rule and related background, as well as a robust discussion of the various circumstances that prompted the extension and the rationale the Agency cited for issuing the interim final rule.

The interim final rule extended the expiration date an additional 8 months beyond the original regulatory deadline of March 4, 2022. This time-limited extension was intended to give all certifying authorities additional time to respond to reviews and feedback provided by EPA that had been delayed and impacted by the COVID-19 public health emergency. All of the plans are expected to have been returned to the certifying authorities by February 2022. The extension

also provided more time for EPA and certifying authorities to work together to address any remaining issues and for EPA to ultimately approve the certifying authorities' plans. EPA's 8-month extension was necessary to provide EPA with sufficient time to make as much progress toward approving modified certification plans while the Agency simultaneously developed rulemaking for public comment on the need for and appropriate length of a longer extension, taking into account both APA and FIFRA rulemaking requirements. The additional 8 months also provides EPA with an opportunity to assess the status of plan approvals once all plans have been returned to the certifying authorities in February 2022 up to the revised expiration date of November 4, 2022. The existing certifications plans are set to expire on November 4, 2022, unless the modified plans are approved by EPA and the approved plans specify the time needed to fully implement the revisions identified, or alternatively, if EPA issues another extension based on the need and results of the public comment period for this rulemaking.

### **III. Provisions of this Proposed Rule**

#### *A. Proposed New Deadline for Certification Plan Approvals*

EPA is proposing that the deadline for amended certification plans to be approved without interruption to the existing certification plans, as provided in 40 CFR 171.5(c), be changed up to but not longer than November 4, 2024. Additional time is likely necessary to assure that all the certifying authorities have had enough time to present approvable certification plans, and for EPA to work more closely with the Federal, State, territory, and tribal agencies on necessary modifications, and ultimately approve the certification plans. As some certifying authorities are close to completing their revisions and receiving EPA approval on their plans, EPA anticipates that certification plan approvals will begin in early 2022 and will continue on a rolling basis through the recently extended November 2022 date while this action goes through notice-and-comment rulemaking procedures. EPA anticipates that notice of certification plan approvals will be periodically provided to the public in batched notices in the *Federal Register* and on EPA's website as they are approved. However, EPA is proposing this additional

extension up to but not longer than November 4, 2024, because some certifying authorities and EPA may need more time to collaborate on and address issues raised during EPA's review of the plans.

*B. Need for Extending the Existing Plans' Expiration Date*

An extension of the expiration date for existing certification plans is likely needed to ensure that Federal, State, territory, and tribal agencies have sufficient time to revise their certification plans in response to EPA's feedback on their draft certification plans. On December 20, 2021, EPA issued an interim final rule that extended the original expiration date of existing plans from March 4, 2022, to November 4, 2022 (Ref. 1). However, absent an additional extension of this deadline, State, territory, tribal, and other Federal agency certification programs without an approved revised plan could terminate, causing severe disruption for agricultural, commercial, and governmental users of RUPs.

While Unit II. of the preamble in the interim final rule (Ref. 1) included a robust discussion of the circumstances necessitating the extension of the expiration date of existing plans from March 2022 to November 2022, there may not be sufficient time to ensure that all modified plans submitted to EPA are able to obtain approval prior to the expiration of existing plans (Ref. 1). EPA's process for approving modified plans involves extensive coordination between certifying authorities, EPA regional offices, and EPA Headquarters. Many of the States, territories, and tribes that have submitted modified plans for EPA approval are required to make statutory and regulatory changes that often involve a long and complex legislative process and public comment procedures. Many of these plans also contain State, territory, or tribal-specific issues that require individualized attention and coordination with EPA. Further, many certifying authorities have proposed implementation timelines that account for changes in the infrastructure of existing certification programs, such as revisions to current RUP applicator certification exam standards and training manuals. As explained in the interim final rule, the COVID-19 public health emergency delayed or impeded the process of EPA's coordination with certifying

authorities on these changes, thereby necessitating an extension of the deadline for expiration of existing plans (Ref. 1). Failure to extend the regulatory deadline to provide enough time for certifying authorities to respond to EPA's feedback and for EPA to approve those revisions would result in the expiration of certification programs without approved plans, which would significantly limit access to certification and would thereby limit access to RUPs that are necessary for various industries that rely upon pest control.

If EPA is unable to further extend the regulatory deadline for approved certification plans as needed, any existing certification plans that remain in effect pending EPA's approval of submitted certification plan modifications will expire on November 4, 2022, in which case 7 U.S.C. 136i(a) requires that EPA provide RUP applicator certification programs in States (including territories) where a State certification plan is not approved. If EPA were to take on the burden of administering certification programs for parts of the country, it would draw resources away from other important Agency priorities, including implementation support of certification plans that are approved before the November 4, 2022 deadline. In addition, it would take significant time and resources to set up the infrastructure for such Federal certification programs and to train, test, and certify applicators, which would likely result in RUP use being curtailed in affected parts of the country. Moreover, once EPA-administered certification programs are established, it is unlikely that they would operate at the same capacity as existing programs, but rather, would provide fewer and less localized opportunities for applicators to satisfy certification requirements. As a result, significant adverse effects are expected on the pest control industry if current plans expire, as existing certifications will no longer be valid and will need to be replaced with Federal certifications. This could create economic and public health ramifications in a wide range of sectors such as agricultural commodity production, public health pest control, and industrial, institutional, and structural pest control. For agriculture, it is unlikely that EPA would be able to establish these Federal certification programs before the start of the 2023 growing season, which would have potentially devastating impacts on the agricultural

sector in parts of the country. RUP access in this scenario would be minimal for most, if not all, of the 2023 growing season, and significant disruptions could extend even further.

#### **IV. References**

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

1. EPA. Pesticides; Certification of Pesticide Applicators; Extension to Expiration Date of Certification Plans; Interim Final Rule. *Federal Register*. 86 FR 71831, December 20, 2021 (FRL 9134-02-OCSPP).

2. EPA. Pesticides; Certification of Pesticide Applicators; Final Rule. *Federal Register*. 82 FR 952, January 4, 2017 (FRL-9956-70).

3. EPA. Economic Analysis of the Final Amendments to 40 CFR Part 171: Certification of Pesticide Applicators [RIN 2070-AJ20]. December 6, 2016. Docket ID No. EPA-HQ-OPP-2011-0183-0807.

4. EPA. Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans; Submission to the Secretary of Agriculture. *Federal Register*. 87 FR 3738, January 25, 2022 (FRL-9134.1-02-OCSPP).

#### **V. FIFRA Review Requirements**

In accordance with FIFRA section 25(a), EPA submitted a draft of this proposed rule to the United States Department of Agriculture (USDA) (Ref. 4) and to the appropriate Congressional Committees.

USDA responded without comments. The FIFRA Scientific Advisory Panel (SAP) waived review of this proposed rule, concluding that the proposed rule does not contain issues

that warrant scientific review by the SAP.

## **VI. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993) and was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been reflected in the docket for this action.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection activities or burden subject to OMB review and approval under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and associated burden under OMB Control Numbers 2070-0029 (EPA ICR No. 0155) and 2070-0196 (EPA ICR No. 2499). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the *Federal Register*, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities. This rulemaking primarily affects Federal, State, territory, and tribal agencies who

administer a certification program for pesticides applicators, which do not qualify as small entities under the RFA. In addition, this rulemaking may potentially affect other entities that may qualify as a small entity under the RFA, e.g., companies that are registrants of RUP products; a person who applies RUPs, including those under the direct supervision of a certified applicator; a person who relies upon the availability of RUPs; someone who hires a certified applicator to apply an RUP; a pesticide safety educator; or other persons who provides pesticide safety training for pesticide applicator certification or recertification.

The Agency is certifying that this rulemaking will not have a significant economic impact on a substantial number of small entities because the rule would relieve regulatory burden for potentially affected small entities. Without the proposed deadline extension, modified certification programs that are not approved by the recently modified regulatory deadline of November 4, 2022, will expire, and applicators formerly certified under such plans will no longer be allowed to use RUPs. This action proposes to extend the expiration date for existing certification plans to allow more time for certifying authorities to respond to EPA comments and for EPA to work with the certifying authorities to assure that their proposed certification plan modifications meet current Federal standards. EPA has therefore concluded that this action would relieve regulatory burden for all directly regulated small entities.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local or tribal governments or the private sector.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.



*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045, because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad*

In accordance with Executive Order 12898 (59 FR 7629, February 16, 1994) and

Executive Order 14008 (86 FR 7619, January 27, 2021), EPA finds that this action will not result in disproportionately high and adverse human health, environmental, climate-related, or other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts during this administrative action to extend the expiration date. This extension will provide EPA and the certifying authorities an opportunity to finalize the revised certification plans, ensuring that the increased protections identified in the 2017 rule are realized for all affected populations. EPA will continue to work expeditiously with certification authorities to review and approve plans on a rolling basis. This engagement, which was impacted by the COVID-19 public health emergency, will ensure the modified plans are appropriately protective of certified pesticide applicators and those under their direct supervision, and will ensure that certified applicators are trained to prevent bystander and worker exposures.

**List of Subjects in 40 CFR Part 171**

Environmental protection, Applicator competency, Agricultural worker safety, Certified applicator, Pesticide safety training, Pesticide worker safety, Pesticides and pests, Restricted use pesticides.

**Michal Freedhoff,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

Therefore, for the reasons set forth in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

## **PART 171—CERTIFICATION OF PESTICIDE APPLICATORS**

1. The authority citation for part 171 is revised to read as follows:

**Authority:** 7 U.S.C. 136-136y.

### **§ 171.5 Effective Date.**

2. Amend § 171.5 by revising paragraph (c) to read as follows:

\* \* \* \* \*

(c) *Extension of an existing plan during EPA review of proposed revisions.* If by March 4, 2020, a certifying authority has submitted to EPA a proposed modification of its certification plan pursuant to subpart D of this part, its certification plan approved by EPA before March 6, 2017 will remain in effect until EPA has approved or rejected the modified plan pursuant to § 171.309(a)(4) or November 4, 2024, whichever is earlier, except as provided in paragraph (d) of this section and § 171.309(b).

\* \* \* \* \*

[FR Doc. 2022-02543 Filed: 2/4/2022 8:45 am; Publication Date: 2/7/2022]